Supreme Court, U.S.
FILED
JAN 19 2016
OFFICE OF THE CLERK

No. 15-797

In The Supreme Court of the United States

BOBBY JAMES MOORE,

Petitioner,

v.

TEXAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

BRIEF *AMICI CURIAE* OF THE NATIONAL RELIGIOUS CAMPAIGN AGAINST TORTURE, REPRIEVE US, AND THE CENTER FOR CONSTITUTIONAL RIGHTS IN SUPPORT OF PETITIONER

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Dated: January 19, 2016

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STATEMENT OF INTERESTS OF *AMICI CURIAE*

Amici[1] are United States based non-profits dedicated to securing human rights for underrepresented and marginalized people.

The National Religious Campaign Against Torture ("NRCAT") was launched following the release of the Abu Ghraib photos, during a conference of diverse American faith leaders that had been convened to examine how religious communities could respond to the use of torture. NRCAT's mission is to mobilize people of faith to end torture in U.S. policy, practice and culture. NRCAT has over 320 religious organizations as members. These include evangelical Christians, Roman Catholics, Orthodox Christians, mainline Protestants, Muslims, Jews, Sikhs, Hindus, Bahá'ís, and Buddhists. Member organizations include national denominational and faith group bodies, regional entities such as state ecumenical agencies, and local religious organizations and congregations.

One of the four areas of NRCAT's work is to end the use of torture in U.S. prisons and detention facilities, in particular the use of prolonged solitary

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[1] Pursuant to Supreme Court Rule 37.2, counsel for *Amici Curiae* certifies that counsel of record for all parties received timely notice of the intent to file this brief, and the parties have each provided their consent in writing to the filing of this brief. Pursuant to Rule 37.6, counsel for *Amici Curiae* certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than *Amici Curiae* or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

confinement. NRCAT is engaged in supporting religious organizations and communities of faith nationwide to participate in campaigns to stop the torture of solitary confinement, partnering with survivors of solitary confinement, their loved ones, and representatives from the international human rights, legal, architectural, medical and mental health fields. Among other actions, NRCAT, with its partner the Maine Council of Churches, successfully advocated in Maine for the Department of Corrections to reduce its population of prisoners held in prolonged solitary confinement. Maine has now reduced its solitary confinement population by more than seventy percent.

Reprieve US is a non-profit organization of lawyers and investigators advocating on behalf of individuals facing execution, detention without trial and extra-judicial killing in the United States and around the world. It helps people who are suffering human rights abuses at the hands of governments. Reprieve US focuses on cases that help reshape the U.S. policy debate in accordance with international human rights norms and the affirmation of every person's dignity and legal rights.

Reprieve US works to end the death penalty in the United States and worldwide. It provides direct legal assistance to people facing the death penalty or languishing on death row. Reprieve US is currently working with more than seventy people facing execution in eleven countries, including the United States, Pakistan, the Democratic Republic of Congo, Egypt, Ethiopia, Indonesia, and UAE. Its caseworkers work with the

local lawyers of its clients, investigate cases, draft legal documents, and provide training on capital defense issues and best practices. Reprieve US also investigates and challenges the use of torture around the world.

Reprieve US works with its sister organization Reprieve UK on a variety of projects. Reprieve UK has litigated death penalty cases for more than two decades around the world and in numerous states in the United States, including in the State of Texas.

The Center for Constitutional Rights ("CCR") is a national non-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Among other areas, CCR has focused on the human rights implications of the United States' use of the death penalty and has recently published two reports regarding conditions on death row, including *Discrimination, Torture, and Execution: A Human Rights Analysis of the Death Penalty in California and Louisiana*, October 2013 (*available at* http://ccrjustice.org/sites/default/files/assets/files/2013-Death-Penalty-Report.pdf) and *The United States Tortures Before It Kills: An Examination of the Death Row Experience from a Human Rights Perspective*, October 2011 (*available at* http://ccrjustice.org/sites/default/files/assets/files/deathrow_torture_postition_paper.pdf).

It is CCR's position that prolonged solitary confinement amounts to torture, prohibited by

international law and by the Eighth Amendment to the United States Constitution. CCR has successfully litigated two challenges to solitary confinement, including *Wilkinson v. Austin*, 545 U.S. 209 (2005) (Ohio prisoners have a liberty interest in avoiding placement in Supermax prison), and *Ashker v. Governor of California*, No. C09-5796 (N.D. Ca.) (Eighth Amendment class action challenge to prolonged solitary confinement resulting in landmark settlement substantially limiting California's use of such confinement).

SUMMARY OF ARGUMENT

Petitioner Bobby James Moore was initially sentenced to death by the State of Texas in July 1980 when he was twenty years old. He is now fifty-six years old. Except for the period between the overturning of his initial death sentence by the Fifth Circuit Court of Appeals in October 1999, *Moore v. Johnson*, 194 F.3d 586 (5th Cir. 1999), and his resentencing to death in February 2001, Mr. Moore has lived that entire time under the threat of execution.

Twice during those thirty-five years the State signed warrants setting his execution date. Once, a stay was issued less than twenty-four hours before he was scheduled to die. *Moore v. McCotter*, No. H-86-835, Order Granting Stay of Execution (S.D. Tex. Feb. 25, 1986). On the other occasion, his execution was stayed five days before the scheduled date. *Moore v. Collins*, No. H-93-3217, Order Granting Stay of Execution (S.D. Tex. Oct. 21, 1993).

Mr. Moore has spent most of the almost fifteen years since he was resentenced to death (beginning in April 2001) held in "administrative segregation" in Texas's Polunsky Unit pursuant to the Texas Department of Criminal Justice's ("TDCJ") Death Row Plan.[2] As a result, he spends twenty-two and one half hours per day, every day, alone in a cell, and, among other deprivations, is denied contact visits. He is not being held in administrative segregation because of his conduct or violation of rules while incarcerated. He is being held in administrative segregation because all death-sentenced male inmates in Texas are so held.

The potential harms and adverse consequences of holding individuals in solitary confinement, such as the administrative segregation required by TDCJ's Death Row Plan, have been acknowledged by this Court, *see, e.g.*, *In re Medley*, 134 U.S. 160, 167-71 (1890), as well as penological and medical experts, international organizations and courts. It is tantamount to torture to hold humans in the conditions of isolation under which Mr. Moore, and other men sentenced to death in Texas, are held for an indefinite period where the only prospect for release is execution. Such treatment is precisely what the Eighth Amendment's prohibition on cruel and unusual punishment is meant to preclude.

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[2] During sixty-nine days of this period, Mr. Moore was in a county jail, not death row, for a court-ordered psychological exam. App. 46a. He also was held in a county jail for several weeks in connection with his January 2014 evidentiary hearing.

ARGUMENT

I. TDCJ Death Row Plan Imposes Prolonged, Indefinite Solitary Confinement on Petitioner and Others Sentenced to Death with No Security Justification.

The TDCJ Death Row Plan defines the conditions under which Petitioner, and all others sentenced to death in Texas, are confined.[3] Currently, and since 1999, all death-sentenced male offenders are assigned to one of three levels of Death Row Segregation. Offenders assigned to Death Row Segregation are kept in what amounts to solitary confinement. They are locked in their solid steel doored, sixty square foot, individual cells twenty-two and one half hours per day. Their meals are provided in their cells. They are not permitted to work, go to the law library, participate in group religious activities, or associate with other inmates in any way At best, they are permitted seven to twelve hours of out-of-cell physical recreation per week.[4] That recreation occurs alone "in a dog-run

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[3] The TDCJ Death Row Plan is available online (http://tifa.org/wp-content/uploads/2014/02/Administrative-Segregation-Death-Row-Plan-1.pdf).

[4] *Id.* at 17-18. Level I offenders are allowed out-of-cell recreation in accordance with one of the three schedules: (a) one hour per day, seven days a week; (b) two hours per day, five days per week; or (c) three hours per day, four days per week. Level II offenders are permitted one hour per day, four days per week of out-of-cell recreation. And Level III offenders are permitted one hour per day, three days per week of out-of-cell recreation.

type enclosure."[5] They are not even permitted to watch television.[6]

The TDCJ Death Row Plan does contain procedures for evaluating death-sentenced offenders to determine if they are "Work Capable."[7] Work Capable offenders are eligible to hold prison jobs, engage in recreation with up to three other offenders at once, eat meals out of their cells, with others, walk escorted but unrestrained within the building and unescorted within the housing unit to showers and recreation, and participate in group religious

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[5] Christopher Zoukis, *Texas Prison Guard Union Urges Death Row Reforms*, Prison Legal News, Oct. 2015, at 46, *available at* https://www.prisonlegalnews.org/media/issues/10pln15.corrected.pdf. *See also* Alex Hannaford, *Letters from Death Row: Alone on the Inside*, Tex. Observer, Mar. 16, 2015, *available at* http://www.texasobserver.org/letters-from-death-row-alone-on-the-inside/ ("The exercise yard for death row inmates at Polunsky is not much of a yard at all. Surrounded on all sides by concrete walls, the only view of the sky in the yard is through a grill in the roof.").

[6] In addition to the TDCJ Death Row Plan itself, descriptions of the conditions for death-sentenced male offenders in Texas may be found in *Solitary Confinement on Texas Death Row: Submission from American Civil Liberties Union of Texas, Texas Civil Rights Project, and Texas Defender Service*, Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before S. Judiciary Subcomm. on Constitution, Civil Rights & Human Rights, 113th Cong. (2014), *available at* http://solitarywatch.com/wp-content/uploads/2014/02/TX-Death-Row-ACLU-of-TX_-TCRP_-TDS.pdf, and David Mann, *Solitary Men*, Tex. Observer, Nov. 10, 2010, at 6, *available at* http://archives.texasobserver.org/issue/2010/11/12#page=1.

[7] TDCJ Death Row Plan, *supra* note 3, at 4-6.

services.[8] Prior to 1999 death row inmates could work morning and afternoon shifts at the prison garment factory and had several hours a day of group recreation. They could play board games with each other, watch television, receive education programs, and were alone in their cells only at night. They even occasionally were permitted "contact visits," allowing them in the same room with visitors without a glass partition separating them.[9]

However, even though it is the stated policy of TDCJ "to assign offenders to a meaningful prison job when available," the Work Capable program for male offenders has been suspended since 1999.[10] Accordingly, by virtue of his sentence and gender, and without regard to his conduct or actual risk, Mr. Moore has been condemned to spend an indefinite period, now approaching fifteen years, in solitary confinement.

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[8] *Id.* at 14-15.

[9] Mann, *supra* note 6, at 8.

[10] The Work Capable program was suspended, and all male death-sentenced offenders consigned to segregation, following an attempted escape by seven death-sentenced inmates, one of whom made it out of the facility but was shot during the escape and found dead one week later. *Id.*; Scott Parks, *Report on 1998 escape led to shake-up at prison; Response may offer clues to what's in store in Connally case*, Dallas Morning News, Jan. 12, 2001, at 16A.

There is no valid justification for subjecting *every* male offender under sentence of death to solitary confinement without regard to the actual risk they pose in the prison setting. *See* Mark D. Cunningham & Mark P Vigen, *Death Row Inmate Characteristics, Adjustment, and Confinement: A Critical Review of the Literature*, 20 Behav. Sci. L. 191, 203 (2002) (Death-sentenced inmates "typically do not perpetrate violence in prison."); Mark D. Cunningham et al., *Is Death Row Obsolete? A Decade of Mainstreaming Death-Sentenced Inmates in Missouri*, 23 Behav. Sci. L. 307, 316-19 (2005) (Death-sentenced offenders are not more violent than other groups of inmates and are actually less violent than some subsets of the prison population). Indefinite solitary confinement raises an Eighth Amendment issue even when motivated by significant security concerns; subjecting individuals to the harsh additional punishment of indefinite solitary confinement where there is no security or other interest being served, raises substantial Eighth Amendment concerns that should be addressed by this Court.

II. Prolonged, Indefinite Solitary Confinement, like Petitioner's Pursuant to the TDCJ Death Row Plan, Has Profound, Devastating Impacts on the Mental and Physical Health of Prisoners.

The historical understanding of the adverse impact of solitary confinement, particularly prolonged, indefinite solitary confinement, has been reinforced by modern medical and penological study as well as the revealed experience of those who have

been subjected to it. Experts and victims alike have concluded that isolation can be as, or even more, destructive to human beings than physical torture.

One hundred and twenty-five years ago, this Court in *In re Medley*, 134 U.S. 160, 167-71 (1890), observed that the deleterious effects of solitary confinement on prisoners were well understood. In ruling that a new statutory requirement that the condemned prisoner be held in solitary confinement was sufficient additional punishment triggering application of the *Ex Post Facto* Clause, the Court observed that "serious objections" had arisen to maintaining prisoners in total isolation because "[a] considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community." *Id.* at 168.

In his recent concurrence in *Davis v. Ayala*, ___ U.S. ___, 135 S. Ct. 2187, 2208-10 (2015), Justice Kennedy noted that understanding of the impact of isolation on prisoners went back at least to the eighteenth century. A British prison reformer of the era wrote that "criminals who had affected an air of boldness during their trial, and appeared quite unconcerned at the pronouncing sentence upon them, were struck with horror, and shed tears when brought to these darksome solitary abodes." *Id.* at 2209. The devastating impact of solitary

confinement did not require the methodologies of modern cognitive science. It was recognized early on as destructive of human dignity and personality.

Modern medical researchers have reinforced that insight by identifying a variety of adverse consequences to individuals subject to prolonged isolation in prison and other situations. Among the commonly found symptoms are hyper-responsivity to external stimuli; perceptual distortions, illusions, and hallucinations; panic attacks; difficulties with thinking, concentration, and memory; intrusive obsessional thoughts of primitive aggressive fantasies; overt paranoia; and problems with impulse control.[11] The long-term consequences of prolonged isolation include persistent symptoms of post-traumatic stress, such as flashbacks, chronic hypervigilance, and a pervasive sense of hopelessness, as well as lasting personality changes.[12] "Suicides occur disproportionately more often in segregation units than elsewhere in prison."[13]

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[11] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y 325, 333-36 (2006). *See also* Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49(1) Crime and Delinquency 124 (2003) (placement in isolation has been associated with feelings of hopelessness, irritability, aggression, suicidal ideation and a sense of impending emotional breakdown).

[12] Grassian, *supra* note 11, at 353.

[13] Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry and L. 104, 105 (2010) (citing Raymond F. Patterson & Kerry Hughes, *Review of completed suicides in the California Department of Corrections*

Summarizing the research in the field, *A Sourcebook on Solitary Confinement* found that the effects on health of solitary confinement include physiological signs and symptoms, such as: gastro-intestinal, cardiovascular and genito-urinary problems; diaphoresis (sudden excessive sweating); insomnia; deterioration of eyesight; lethargy, weakness, profound fatigue; feeling cold; heart palpitations; migraine headaches; back and other joint pains; poor appetite, weight loss, and diarrhea; and tremulousness.[14] An even larger array of psychological symptoms were found, including: anxiety, ranging from feelings of tension to full-blown panic attacks; depression, varying from low mood to clinical depression; anger, ranging from irritability to rage; cognitive disturbances, ranging from lack of concentration to confused states; perceptual distortions, ranging from hypersensitivity to hallucinations; paranoia and psychosis, ranging

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and Rehabilitation, 1999 to 2004, 59 Psychiatr. Serv. 676, 677-81 (2008); Thomas W White et al., *A comprehensive analysis of suicide in federal prisons: a fifteen-year review*, 9 J. Correct Health Care 321-43 (2002); Lindsay M. Hayes, National Center on Institutions and Alternatives, *Prison Suicide: an Overview and Guide to Prevention* (1995), *available at* http://www.nicic.gov/library/files/012475.pdf).

[14] Sharon Shalev, *A Sourcebook on Solitary Confinement*, Section 2.3, The negative health effects of solitary confinement: reported symptoms (Mannheim Centre for Criminology, London School of Economics and Political Science, 2008); *see also* Sharon Shalev, *Chapter 5: Solitary Confinement as a Prison Health Issue*, PRISONS AND HEALTH 27 (World Health Organization, 2014).

from obsessional thoughts to full-blown psychosis; and self-harm and suicide.[15]

The impact of isolation can be seen not only in observed behaviors and reported symptoms, but also in clinical observations of prisoners' brains. "[E]ven a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium."[16]

Studies of prisoners of war held in solitary confinement reveal similar consequences of the practice. A 1992 study of detainees in the former Yugoslavia found that the most severe brain abnormalities were in prisoners who either sustained head traumas sufficient to render them unconscious or who had been placed in solitary confinement.[17] "Without sustained social

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[15] *Id.*

[16] Grassian, *supra* note 11, at 331. *See also* Paul Gendreau et al., *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. Abnormal Psychol. 54, 57-58 (1972) (declining EEG alpha frequency observed in study of prisoners who volunteered to spend a week in isolation).

[17] Atul Gawande, *Hellhole: Is Long-Term Solitary Confinement Torture?*, The New Yorker, Mar. 30, 2009, http://www.newyorker.com/magazine/2009/03/30/hellhole. *See also* Elizabeth A. Wilson, *Beyond the Rack: Post-Enlightenment Torture*, 39 New Eng. J. on Crim. & Civ. Confinement 41, 59 (2013) ("Solitary confinement can result in brain changes similar to those from severe blows to the head causing unconsciousness.") (citing Andelko Vrca et al., *Visual Evoked*

interaction, the human brain may become as impaired as one that has incurred a traumatic injury."[18] Similarly, a study by the U.S. military of former prisoners of war returned from imprisonment in Vietnam reported that they found social isolation to be as torturous and agonizing as any physical abuse they suffered.[19]

Perhaps the most powerful evidence of the impact of prolonged, indefinite solitary confinement is the statements of those who have been subjected to it. John McCain spent five and a half years as a prisoner of war – over two of those years were spent in isolation. Regarding those years, Senator McCain wrote "[i]t's an awful thing, solitary . . [i]t crushes your spirit and weakens your resistance more effectively than any other form of mistreatment."[20]

Terry Anderson spent seven years as a hostage of Hezbollah in Lebanon. The New Yorker summarizes the description of his ordeal in his memoir, *Den of Lions*, and relates some of the impacts of solitary confinement:

> He was despondent and depressed. Then, with time, he began to feel something more. He felt himself disintegrating. It was as if his brain

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Potentials in Relation to Factors of Imprisonment in Detention Camps, 109 Int. J. Legal Med. 114, 114-15 (1996)).

[18] Gawande, *supra* note 17.

[19] *Id.*

[20] John McCain, Faith of My Fathers 206 (2000).

were grinding down. A month into his confinement, he recalled in his memoir, "The mind is a blank. Jesus, I always thought I was smart. Where are all the things I learned, the books I read, the poems I memorized? There's nothing there, just a formless, gray-black misery. My mind's gone dead. God, help me."

He was stiff from lying in bed day and night, yet tired all the time. He dozed off and on constantly, sleeping twelve hours a day. He craved activity of almost any kind. He would watch the daylight wax and wane on the ceiling, or roaches creep slowly up the wall. He had a Bible and tried to read, but he often found that he lacked the concentration to do so. He observed himself becoming neurotically possessive about his little space, at times putting his life in jeopardy by flying into a rage if a guard happened to step on his bed. He brooded incessantly, thinking back on all the mistakes he'd made in life, his regrets, his offenses against God and family. .

For unpredictable stretches of time, he was granted the salvation of a companion – sometimes he shared a cell with as many as four other hostages – and he noticed that his thinking recovered rapidly

> when this occurred. He could read and concentrate longer, avoid hallucinations, and better control his emotions. "I would rather have had the worst companion than no companion at all," he noted.
>
> . After a few weeks, he felt his mind slipping away again. "I find myself trembling sometimes for no reason," he wrote. "I'm afraid I'm beginning to lose my mind, to lose control completely."
>
> One day, three years into his ordeal, he snapped. He walked over to a wall and began beating his forehead against it, dozens of times. His head was smashed and bleeding before the guards were able to stop him.[21]

The history, research and testimony of those who have lived it provide ample validation for the observation that "[s]olitary confinement is recognized as difficult to withstand; indeed, psychological stressors such as isolation can be as clinically distressing as physical torture."[22]

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[21] Gawande, *supra* note 17.

[22] Metzner, *supra* note 13, at 104 (citing Hernán Reyes, *The worst scars are in the mind: psychological torture*, 89 Int. Rev. Red Cross 591-617 (2007); Metin Başoğlu et al., *Torture vs. other cruel, inhuman and degrading treatment: is the distinction real or apparent?*, 64 Archives of Gen. Psychiatry 277-85 (2007)).

III. International Human Rights Organizations and Courts Have Found that Prolonged, Indefinite Solitary Confinement, like Petitioner's Pursuant to the TDCJ Death Row Plan, Constitutes Torture.

The United Nations Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment has recognized that given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 (prohibition of torture and ill-treatment) of the International Covenant for Civil and Political Rights, adopted Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) ("ICCPR"). It may also constitute torture as defined in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") or cruel, inhuman or degrading treatment of punishment ("CIDT") as defined in article 16 of the CAT. *See* U.N. Special Rapporteur of the Human Rights Council, Interim Rep. on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 70, U.N. Doc. A/66/268 (Aug. 5, 2011).

The U.N. Human Rights Committee has also noted that prolonged solitary confinement of the detained or imprisoned person might amount to acts prohibited by article 7 of the ICCPR. *See* U.N. Rep. of the Human Rights Comm., General Comment No. 20 (44) (art. 7), U.N. Doc. A/47/40, annex VI, sec. A, at 193, GAOR, 47th Sess., Supp. No. 40 (1992). And the Istanbul Statement on the Use and Effects of

Solitary Confinement, adopted on December 9, 2007 at the International Psychological Trauma Symposium, cautions that "[a]s a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort." *Instanbul Statement on the Use and Effects of Solitary Confinement*, 18 Torture, no. 1, 2008, at 63, 66; *see also* U.N. Special Rapporteur of the Human Rights Council, Interim Rep. on torture and other cruel, inhuman or degrading treatment or punishment, Annex, 25 U.N. Doc. A/63/175 (July 28, 2008).

Similarly, international courts have consistently found that prolonged or indefinite isolation are strictly prohibited because they breach the international legal prohibition against torture and/or CIDT. *See, e.g.*, *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 87 (Nov. 27, 2003) (restating the finding of the Inter-American Court of Human Rights that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment"); *Bámaca Velásquez v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 150 (Nov. 25, 2000) (finding that "the prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being"); *Babar Ahmad and Others v. United Kingdom*, Eur. Ct. H.R. App. Nos. 24027/07 et al., ¶ 210, 52 I.L.M. 443, 2013 WL 5785362 (Apr. 10, 2012) (stating that while the

Court has never specified a period of time beyond which solitary confinement will attain the minimum level of severity required by article 3 (prohibition against torture and ill-treatment), "solitary confinement, even in cases entailing relative isolation, cannot be imposed indefinitely on a prisoner"); *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991, ¶ 9.4 (Aug. 10, 1994) (total isolation, even for a period of several days, without the possibility of recreation, violates article 7 of the ICCPR).

Other courts have found that placing individuals in solitary confinement for periods of five to six years violates article 10 of the ICCPR (failing to respect the inherent dignity of the human person). *See, e.g., Xavier Evans v. Trinidad and Tobago*, Communication No. 908/2000, U.N. Doc. CCPR/C/77/D/908/2000, ¶ 6.4 (Mar. 21, 2003); *Sobhraj v. Nepal*, Communication No. 1870/2009, U.N. Doc. CCPR/C/99/D/1870/2009, ¶ 7.7 (July 27, 2010); *see also Kennedy v. Trinidad and Tobago*, Communication No. 845/1998, U.N. Doc. CCPR/C/74/D/845/1998 (Mar. 26, 2002) (finding violation of article 10 based on conditions of confinement, which included eight years on death row in solitary confinement); *Yong-Joo Kang*, Communication No. 878/1999, U.N. Doc. CCPR/C/78/D/878/1999, ¶ 7.3 (July 15, 2003) (finding violation of article 10 where applicant was held in solitary confinement for thirteen years based on his presumed political opinion. Detention in solitary confinement for a period of 13 years "is a measure of such gravity, and of such fundamental impact on the

individual in question, that it requires the most serious and detailed justification.").

The European Court of Human Rights has found that a stringent regime of solitary confinement of approximately three years constitutes inhuman and degrading treatment. *Iorgov v. Bulgaria*, Eur. Ct. H.R. App. No. 40653/98, ¶¶ 82-84, 86 (Mar. 11, 2004), http://hudoc.echr.coe.int/eng?i=001-61679 (finding violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms where the applicant was held in solitary confinement for approximately three years in a small cell, was allowed one hour out-of-cell time in an open yard with other inmates, spent almost 23 hours per day alone in his cell, and could receive one or two half-hour visits per month. The Court considered that "the stringent custodial regime to which the applicant was subjected and the material conditions in which he was detained must have caused him suffering exceeding the unavoidable level inherent in detention."). *See also Polay Campos v. Peru*, Communication No. 577/1994, U.N. Doc. CCPR/C/61/D/577/1994, ¶ 8.7 (Nov. 5, 1997) (finding that relative isolation for 23 hours a day in a small cell with only 10 minutes of sunlight per day constitutes treatment in violation of articles 7 and 10 of the ICCPR). The European Court of Human Rights also stated that "even for difficult and dangerous prisoners, periods of solitary confinement should be as short as possible," and found violations even for solitary confinement of less than three years. *See Mathew v. Netherlands*, 2005-IX Eur. Ct. H.R. 57, ¶¶ 197, 217 (Sept. 29, 2005) (finding that the applicant was subjected to inhuman treatment,

in violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by virtue of his detention "in a situation amounting to solitary confinement," which included confinement to his cell for 23 hours a day).

Relying upon article 5 of the American Convention on Human Rights, which recognizes the right to the integrity of the person, the Inter-American Court of Human Rights found that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being." *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 156 (July 21, 1988).

Amici bring to the attention of the Court the uniform view of the medical, psychiatric and international legal community to underline that the experience of solitary confinement and the ineluctable mental and physical disintegration of its victims is one which is universally devastating and destructive, is unjustifiable as a security matter, and is inevitably cruel and unusual under the standards of the Eighth Amendment, customary international law, treaties to which the U.S. is signatory, and the common law.

CONCLUSION

Prolonged, indefinite solitary confinement has been long recognized as having devastating effects on individuals, effects like those of physical torture. It has been criticized and rejected by international organizations and courts. It violates evolving standards of decency as incorporated into the Constitution by the Eighth Amendment to subject a person to such confinement and then execute them. Accordingly, and for the reasons set forth in the petition, the writ of certiorari should be granted.

Dated: January 19, 2016

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